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5 **UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF CALIFORNIA**
7 **SAN FRANCISCO DIVISION**
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10 MONTEVILLE SLOAN, JR., RAUL
11 SIQUEIROS, TODD AND JILL CRALLEY,
12 JOSEPH BRANNAN, LARRY GOODWIN,
13 MARC PERKINS, MARC PERKINS, THOMAS
14 SHORTER, DERICK BRADFORD, GABRIEL
15 DEL VALLE, KEVIN HANNEKEN, EDWIN
16 AND KATELYN DOEPEL, DAN MADSON,
17 JAMES FAULKNER, JOSEPH OLIVIER,
18 SCOTT SMITH, ROSS DAHL, DREW
19 PETERSON, MICHAEL WARE, STEVE
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MOLINA, DENNIS VITA, STEVEN EHRKE,
THOMAS GULLING, RONALD JONES, MIKE
WARPINSKI, WILLIAM MARTELL, JOHN
GRAZIANO, JOSHUA BYRGE, RUDY
SANCHEZ, CHRISTOPHER THACKER,
KELLY HARRIS, JAMES ROBERTSON, and
JONAS BEDNAREK, individually and on behalf
of all others similarly situated,

20 Plaintiffs,

21 v.

22 GENERAL MOTORS LLC,

23 Defendant.
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Case No.: 16-cv-07244-EMC

**AMENDED JOINT CASE
MANAGEMENT STATEMENT &
[PROPOSED] ORDER**

Date: April 24, 2018

Time: 10:30 a.m.

Courtroom 5

Honorable Edward M. Chen

1 **I. INTRODUCTORY STATEMENT**

2 Counsel for the above-captioned Plaintiffs and Defendant General Motors LLC (“GM”)
3 respectfully submit this Amended Joint Case Management Conference Statement and Proposed
4 Order, in accordance with Fed. R. Civ. P 26(f), Civil Local Rule 16-9, and this Court’s
5 Standing Order for All Judges of the Northern District of California (effective January 17,
6 2017).

7 **II. JOINT CASE MANAGEMENT CONFERENCE STATEMENT**

8 **A. Jurisdiction and Service**

9 The Third Amended Complaint asserts subject-matter jurisdiction based on federal
10 question jurisdiction, 28 U.S.C. § 1331, diversity jurisdiction, 28 U.S.C. § 1332(a), and/or the
11 Class Action Fairness Act, 28 U.S.C. § 1332(d). Plaintiffs have served GM.

12 **B. Relevant Factual Background**

13 **1. Summary of Plaintiffs’ Allegations**

14 This case involves the inherently defective Generation IV Vortec 5300 Engine that was
15 designed, manufactured, and installed by GM in its most popular SUVs and full-sized pickup
16 trucks, dating back to model year 2007 vehicles. Due to General Motors Corporation’s
17 bankruptcy, only model year 2010-2014 SUVs and pickups with the defective Generation IV
18 Vortec 5300 Engine (the “Class Vehicles”) are at issue in this case.

19 The Generation IV Vortec 5300 Engines consume an extremely high volume of oil that
20 far exceeds industry standards for reasonable oil consumption. This excessive oil consumption
21 results in low oil levels, insufficient engine lubricity levels, internal engine component damage,
22 engine misfire, and stalling. The primary cause of the excessive oil consumption is that the
23 piston rings that GM installed within the Generation IV Vortec 5300 Engines do not maintain
24 sufficient tension to keep oil in the crankcase. In addition, the Active Fuel Management
25 system that GM included in the Generation IV Vortec 5300 Engines contributes to the
26 excessive oil consumption by spraying oil directly at the piston skirts. The PCV system within
27 the engines further contributes to the excessive oil consumption problem by vacuuming oil
28 from the valvetrain into the intake system.

1 The Class Vehicles do not warn drivers that their vehicles are consuming excessive
2 amounts of oil and they also fail to provide drivers with advance warning that their vehicles are
3 dangerously low on oil. In fact, GM compounded the excessive oil consumption problem by
4 installing an operator assistance program within each Class Vehicle called the Oil Life
5 Monitoring System, which purportedly informs drivers of when their vehicle is due for an oil
6 change. Despite its name, the Oil Life Monitoring System, however, does not inform drivers
7 when their vehicle is low on oil or otherwise warn of a low oil condition. The Oil Life
8 Monitoring System thus exacerbates the excessive oil consumption problem by encouraging
9 drivers to drive their vehicles well past the point at which the lack of lubricity resulting from
10 the excessive oil consumption will result in engine damage.

11 GM has long known of the excessive oil consumption problem in its Generation IV
12 Vortec 5300 Engines, and has issued multiple Technical Service Bulletins on this issue,
13 attributing its cause to oil getting past the piston rings. Despite this knowledge, GM has never
14 disclosed the oil consumption defect to consumers. Rather, GM has allowed drivers of the
15 Class Vehicles to continue driving those vehicles well past the point at which their vehicles had
16 depleted their oil volumes below levels required for proper engine lubrication and safe
17 operation.

18 **2. GM's Statement Regarding Plaintiffs' Allegations**

19 GM denies that its 5.3 liter Gen IV Vortec engines or their piston rings are defective.
20 Oil consumption issues in model year 2010 through 2013 vehicles equipped with these engines
21 were infrequent and were not caused by any engine or piston ring defects. The Technical
22 Service Bulletins cited in plaintiffs' First Amended Complaint, publicly available on the
23 National Highway Traffic Safety Administration website, concern potential oil consumption
24 issues unrelated to oil rings that were addressed during the 2011 model year. Consistent with
25 the absence of any pervasive design defect, the Third Amended Complaint alleges that only a
26 handful of the hundreds of thousand of owners of model year 2010 through 2013 vehicles
27 experienced unresolved oil consumption issues. In this connection, GM notes that pressure
28 control valve (PCV) and Automatic Fuel Management (AFM) issues that could sometimes

1 increase oil consumption were addressed by production changes during the 2011 model year
2 and free-of-charge warranty repairs for model year 2010 and 2011 vehicles produced prior to
3 the production changes.

4 GM also denies that the Oil Life Monitoring System is defective. As plaintiffs admit,
5 the Oil Life Monitoring System is not designed to directly measure or report oil *levels* but
6 instead uses an algorithm based on engine operation and performance data to predict when the
7 *quality* of engine oil is nearing the end of its life and should be changed. As explained in GM
8 Owners Manuals, customers are responsible for monitoring engine oil levels using regular
9 “dipstick” checks.

10 **C. Legal Issues**

11 **1. Plaintiffs’ Statement**

12 Following the Court’s resolution of GM’s motions to dismiss, the remaining issues
13 are ones of fact (as discussed above) rather than law.

14 **2. GM’s Statement**

15 Following the Court’s ruling on the pleading issues raised by GM’s motions to
16 dismiss, the following legal issues remain pending:

17 (a) Many or all of the plaintiffs and purported class members have not suffered
18 any injury in fact caused by alleged violation of state consumer protection statutes, alleged
19 breach of implied warranties, alleged common law “fraudulent omissions” or other
20 allegedly actionable conduct by GM.

21 (b) Plaintiffs cannot prove any actionable misrepresentations of fact by GM.

22 (c) GM’s 5.3 liter Vortec engine did not create an unreasonable safety hazard that
23 GM knew about and had a pre-sale duty to disclose.

24 (d) Many or all of the plaintiffs cannot show the varying levels of reliance
25 required by consumer protection statutes or common law in their states.

26 (e) Statutes of limitations bar the consumer protection, implied warranty, fraud,
27 unjust enrichment and other claims of plaintiffs and purported class members whose claims
28 are untimely based on the passage of time and the specific elements they must prove to

1 demonstrate fraudulent concealment tolling under the laws of their states.

2 (f) Plaintiffs' unjust enrichment (quasi-contract) claims are barred because their
3 substantive claims provide no basis for ordering the remedy of restitution.

4 (g) Plaintiffs cannot satisfy the Rule 23 requirements for class certification,
5 including without limitation, lack of predominant common issues, typicality, adequacy of
6 representation, superiority and manageability

7 (h) Applicable law prohibits certification of a nationwide class.

8 (i) Plaintiffs' statutory consumer protection claims under the laws of one or more
9 states are barred by their lack of any fiduciary or other confidential relationship with GM
10 that would create a duty of disclosure.

11 (j) Plaintiff's statutory consumer protection claims under the laws of one or more
12 states are barred because the statute does not include or prohibit omissions.

13 (k) Plaintiffs' statutory consumer protection claims under the laws of one or more
14 states are barred by their lack of contractual privity with GM.

15 (l) Plaintiff's Counts 51, 53 and 55 under Louisiana law are pre-empted by La.
16 Rev. Stat. Ann. § 9:2800.52 which provides the exclusive remedy for liability claims
17 against product manufacturers, except for plaintiff's claim for redhibition (Count 50).

18 (m) Plaintiffs' claims for punitive damages under the statutory consumer
19 protection acts of one or more states are barred because these statutes do not authorize
20 punitive damages awards.

21 (n) The statutory consumer protection laws of one or more states do not permit
22 class actions.

23 (o) The statutory consumer protection laws of one or more states do not permit
24 class actions for the recovery of damages.

25 (p) Plaintiffs' statutory consumer protection claims under the laws of one or more
26 states are barred by the economic loss rule.

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1 **D. Motions**

2 On February 27, 2017, Plaintiffs filed their First Amended Class Action Complaint.
3 (Dkt. No. 29.) GM moved to dismiss that complaint on April 10, 2017. (Dkt. No. 47.) On
4 August 1, 2017, the Court granted GM's motion, and gave Plaintiffs leave to replead. (Dkt.
5 No. 62.)

6 Plaintiffs filed their Second Amended Class Action Complaint (Dkt. No. 67) on August
7 31, 2017. On October 10, 2017, GM moved to dismiss that complaint. (Dkt. No. 70.)
8 Plaintiffs filed their opposition on November 15, 2017. (Dkt. No. 73.) GM filed its reply on
9 December 1, 2017. (Dkt. No. 74.) Pursuant to the Court's direction, both parties thereafter
10 filed Supplemental Briefs addressing personal jurisdiction issues. (Dkt. Nos. 86, 87, 88.) On
11 February 7, 2017, the Court granted in part, and denied in part, Defendant's motion to dismiss
12 Plaintiff's Second Amended Complaint, and gave Plaintiffs leave to replead. (Dkt. No. 99.)
13 On March 23, 2018, Plaintiffs filed their Third Amended Class Action Complaint. (Dkt. No.
14 107.) On April 6, 2018, answered the Third Amended Complaint, denying its material
15 allegations and asserting multiple defenses. (Dkt. No. 109.)

16 The Parties agree that it is too early to predict all potential motion practice that may
17 occur in this litigation, but Plaintiffs currently anticipate moving for class certification and both
18 Parties anticipate moving for summary judgment.

19 **E. Amendment of Pleadings**

20 The Parties propose November 16, 2018 as the deadline for amending the pleadings.

21 **F. Evidence Preservation**

22 The parties have instructed their clients regarding their evidence preservation
23 obligations, have reviewed the Guidelines Relating to the Discovery of Electronically Stored
24 Information ("ESI Guidelines") and have agreed to an ESI protocol governing preservation and
25 production of discoverable documents within the possession, custody or control of the Parties.

26 **G. Disclosures**

27 The Parties conducted the Rule 26(f) conference on April 21, 2017 and exchanged their
28 initial disclosures in May 2017.

1 **H. Discovery**

2 The Parties have submitted, and the Court has entered, a stipulation governing ESI and
3 privilege logs (Dkt. No. 94) and a stipulated protective order (Dkt. No. 106).

4 Plaintiffs have served their first sets of document requests and interrogatories, and GM
5 served responses on March 28, 2018. GM has served its first sets of document requests and
6 interrogatories, with Plaintiffs' responses due on April 30, 2018.

7 The Parties intend to seek further discovery in the form of document requests,
8 interrogatories, requests for admissions, and/or depositions regarding issues pertinent to class
9 certification, the merits of Plaintiffs' claims, and GM's defenses.

10 The Parties agree to the presumptive limit of twenty-five (25) written interrogatories set
11 forth in Fed. R. Civ. P. 33.

12 Plaintiffs propose that, deviating from Fed. R. Civ. P. 30, each Party shall be allowed to
13 take up to fifteen (15) depositions without leave of Court. GM believes ten (10) are sufficient.

14 **I. Class Actions**

15 **1. Plaintiffs' Statement**

16 Pursuant to Local Rule 16-9, Plaintiffs state that they seek to maintain this case as a
17 class action, pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3). Plaintiffs seek to
18 represent a nationwide class of current or former owners or lessees of 2010-2013 GM vehicles
19 fitted with GM's defective Generation IV Vortec 5300 Engines. Alternatively, Plaintiffs seek
20 to represent statewide classes of current or former owners or lessees of 2010-2013 GM
21 vehicles fitted with GM's defective Generation IV 5 Vortec 5300 Engines.

22 Plaintiffs allege, on information and belief, that there are not less than 2,000,000
23 members of the nationwide class. There are common questions of law and fact, which
24 predominate over any issues affecting the individual class members. These questions include:
25 whether GM's Generation IV Vortec 5300 engines have an inherent defect resulting in
26 excessive oil consumption, whether GM was aware of this inherent defect, and whether GM
27 concealed this inherent defect from consumers. Plaintiffs' claims are typical of those of the
28 other class members because Plaintiffs and the other class members each paid for GM vehicles

1 that consume an extraordinarily high volume of oil and suffered damages as a result.
2 Plaintiffs' interests do not conflict with those of the other class members and Plaintiffs have
3 retained competent counsel to represent them and the other class members.

4 As stated in Exhibit A, attached hereto, Plaintiffs will move for class certification on or
5 before December 20, 2018.

6 The Parties have agreed, subject to Court approval, to a "bellwether" approach to
7 reduce any burden associated with class certification. Under this approach, Plaintiffs' class
8 certification motion will be limited to five states: California, two other States to be identified
9 by Plaintiffs, and two other States to be identified by GM. The Parties agreed that GM can
10 serve written discovery on all of the Plaintiffs, but GM will not depose Plaintiffs other than the
11 bellwether state Plaintiffs prior to the Court's ruling on Plaintiffs' motion for class
12 certification, Plaintiffs and GM agreed to reserve their rights (after the Court's ruling on
13 Plaintiffs' motion for class certification) to move for or oppose class certification, and take
14 appropriate discovery, with respect to Plaintiffs in the non-bellwether States. Plaintiffs are
15 currently prepared to identify their two additional bellwether States.

16 **2. GM's Statement**

17 GM will oppose class certification on the grounds inter alia that plaintiffs cannot satisfy
18 the commonality, predominance and superiority requirements of Rule 23. Only a small
19 fraction of the model year 2010 through 2013 vehicles that are the subject of this action have
20 experienced oil consumption issues, determining the cause(s) of any such issue would require
21 individual inspection of each vehicle, and these issues may have already been corrected in
22 production, through service parts, and/or eliminated by warranty repairs. GM will identify its
23 two additional "bellwether" states at or shortly after the Case Management Conference.

24 **J. Related Cases**

25 To the best of the Parties' knowledge, there are no other pending related cases.

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1 **K. Relief**

2 **1. Plaintiff's Statement**

3 Plaintiffs seek:

- 4 • Certification of the proposed classes;
- 5 • Appointment of class representatives and Class Counsel;
- 6 • An order temporarily and permanently enjoining GM from continuing the
- 7 alleged unfair business practices;
- 8 • Costs, restitution, actual damages, statutory damages and punitive damages
- 9 in an amount to be determined at trial;
- 10 • An order requiring GM to pay both pre- and post-judgment interest on any
- 11 amounts awarded;
- 12 • An award of costs and attorneys' fees; and such other or further relief as
- 13 may be appropriate.

14 **2. GM's Statement**

15 GM is not seeking any relief at this time. GM denies that plaintiffs or their counsel are

16 entitled to any of the relief that they are requesting.

17 **L. Settlement and ADR**

18 To date, the Parties in this case have not engaged in settlement negotiation or ADR

19 efforts. The Parties, however, have conferred regarding ADR and agreed to participate in

20 private ADR within eight months of the Case Management Conference. (Dkt. No. 64)

21 **M. Consent to Magistrate Judge For All Purposes**

22 The Parties do not consent to a Magistrate Judge for all purposes.

23 **N. Other Reference**

24 To the extent not handled by this Court, the Parties agree that discovery matters should

25 be referred to a Magistrate Judge of this Court. Additionally, this case is not suitable for

26 reference to binding arbitration, a special master, or to the Judicial Panel on Multidistrict

27 Litigation.

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1 **O. Narrowing of Issues**

2 The parties respectfully submit that it is premature to consider agreement to narrow
3 issues for trial or to expedite the presentation of evidence at trial.

4 **P. Expedited Trial Procedure**

5 The Parties respectfully submit that this case is not appropriate for proceedings
6 pursuant to the expedited trial procedure of General Order No. 64, Attachment A.

7 **Q. Scheduling**

8 The Parties have set forth their proposed dates for the scheduling of initial disclosures,
9 designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference,
10 and trial in Exhibit A, attached hereto.

11 **R. Trial**

12 Plaintiffs have demanded a trial by jury on all issues so triable. GM contends that
13 plaintiff is not entitled to a jury trial on its claims for equitable relief (*e.g.*, injunction,
14 restitution) or on its claims for pre-judgment and post-judgment interest, class certification,
15 appointment of class counsel or an award of attorney's fees, costs, and expenses. The Parties
16 respectfully submit that it is premature to estimate an expected length of the trial.

17 **S. Disclosure of Non-Party Interested Entities or Persons**

18 The parties have filed their Disclosures of Non-party Interested Entities or Persons
19 (Dkt. 50 and 54).

20 **T. Professional Conduct**

21 Counsel for both Plaintiffs and GM have reviewed the Guidelines and Standards of
22 Professional Conduct of this Court as set forth in Civil L.R. 11-4 and General Order 40(2).

23 **U. Other Matters**

24 The Parties do not believe any other matters are appropriate for discussion at this time.

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DATED: April 17, 2018

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1 CASE MANAGEMENT ORDER

2 The above AMENDED JOINT CASE MANAGEMENT STATEMENT &
3 PROPOSED ORDER is approved as the Case Management Order for this case and all parties
4 shall comply with its provisions.

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6 IT IS SO ORDERED.

7 Dated:

8 _____
 EDWARD M. CHEN
 UNITED STATES DISTRICT JUDGE

EXHIBIT A

Plaintiffs respectfully propose the following Case Management Schedule:

EVENT	DATE
Last day to file a motion to amend pleadings	November 16, 2018
Deadline for the Parties to substantially complete their document productions	October 5, 2018
Fact Discovery Cut-Off	November 16, 2018
Motion for Class Certification and Plaintiffs' Rule 26(a)(2) Class Certification Expert Disclosures/Reports	December 20, 2018
Opposition to Motion for Class Certification and GM's Rule 26(a)(2) Class Certification Expert Disclosures/Reports	March 15, 2019
Reply in Support of Motion for Class Certification and Plaintiffs' Rebuttal Class Certification Expert Disclosures/Reports	April 29, 2019
Hearing on Motion for Class Certification	To be determined by the Court
Opening Expert Reports	To be scheduled after ruling on class certification
To be scheduled after ruling on class certification	To be scheduled after ruling on class certification
Expert Discovery Complete	To be scheduled after ruling on class certification
Last Day for the Hearing of Dispositive Motions	To be scheduled after ruling on class certification
Final Pretrial Conference	To be determined by the Court
Jury Trial	To be determined by the Court